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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

Shawn Schwartzenberger, Individually and on
behalf of other similarly situated,

Plaintiff,

v.

ConsumerXpress LLC, d/b/a CAC Services,

Defendant.

Case No.: 1:21-CV-00781-JLT-BAM

**STIPULATION AND ORDER
CONCERNING ECF 41**

Complaint Filed: May 13, 2021
First Amended Complaint: July 28, 2021

Plaintiff Shawn Schwartzenberger and Defendant ConsumerXpress LLC, d/b/a CAC Services
(collectively “the Parties”) do hereby stipulate as follows:

1. The Parties entered a stipulation herein as of February 25, 2022. (see ECF 41.) The
Court has ordered that the Parties submit a form of order for the Court’s approval with respect to that
stipulation (ECF 42.).

2. Effective February 25, 2022, Plaintiff’s collective action claims under the Fair Labor
Standards Act (29 U.S.C. § 216(b)) are dismissed with prejudice (ECF 14.), and Plaintiff’s Motion
for Conditional Certification is withdrawn (ECF 27.). The rights of putative plaintiffs, if any, are not
affected by Plaintiff Shawn Schwartzenberger’s dismissal of his right to seek class certification of
FLSA collective action claims.

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3. Effective February 25, 2022, Defendant's Motion to Compel Arbitration was granted. (ECF 25.). Plaintiff's remaining claims are his individual FLSA and related state law claims, as well as a claim under the California Private Attorneys' General Act under Cal. Lab. Code § 2699 *et. seq.*

4. Within 60 days from the date of this Order, Plaintiff may initiate arbitration by filing a Complaint with JAMS consistent with the language of the Parties' agreement:

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by arbitration at Santa Barbara, California before arbitrators. The arbitration will be administered by JAMS under its Comprehensive Arbitration Rules and Procedures and under the Expedited Procedures in those Rules, or, on agreement of the Parties, under JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause will not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. In no event will the damages awarded include punitive or exemplary damages.

5. The Parties may mutually agree to vary the terms specified above as to conditions under which the arbitration will proceed.

6. The Parties disagree as to what should happen if Plaintiff does not initiate arbitration within the ordered time. Defendant requests this Court order that if Plaintiff fails to initiate arbitration within 60 days, Plaintiff's remaining claims will be dismissed with prejudice. Plaintiff proposes that if he chooses not to initiate arbitration within 60 days, that the statute of limitations shall begin to run against his individual wage claims.

7. This action is stayed for the pendency of the arbitration, with a follow-up Arbitration Status Conference set for February 24, 2023 at 1:30 p.m. At the time that either Party shall receive an arbitral award, a dispositive order from the arbitrator, or enter into a settlement agreement, either Party shall so notify the Court.

8. This stipulation shall not affect any of the Parties' rights under the "Business to Business Agreement," which was attached to Defendant's Motion to Compel Arbitration. (ECF 25-2, page 10 *et seq.*)

Dated: August _____, 2022

SAGASER, WATKINS & WIELAND, PC

/s/Paul J. Bauer

Paul J. Bauer

Samuel O. Munson

Attorneys for Defendant ConsumerXpress LLC,
dba CAC Services

Dated: August _____, 2022

SHELLIST LAZARZ SLOBIN, LLP

/s/Ricardo J. Prieto

Ricardo J. Prieto, *Pro Hac Vice*

Attorneys for Plaintiff Shawn Schwartzenberger

ORDER

After consideration of the above stipulation, IT IS HEREBY ADOPTED AS THE ORDER OF THIS COURT.

It is further ordered that a status conference is set before the Magistrate Judge Barbara A. McAuliffe on February 24, 2023 at 9:00 a.m.

IT IS SO ORDERED.

Dated: **August 29, 2022**


UNITED STATES DISTRICT JUDGE